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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,607	03/18/2004	Bret A. Lehmann		1460

7590 02/23/2005  
Bret A. Lehmann  
3119 Leslie Lane  
Eau Claire, WI 54703

EXAMINER

HOESLY, RYAN C

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/804,607

**Applicant(s)**

LEHMANN, BRET A.

**Examiner**

Ryan C. Hoesly

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 2-5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant uses "consisting of" in claim 1, however claims 2-5 introduce further elements as opposed to further defining the claimed elements of claim 1. The specification does support the invention as claimed. The below rejections treat the claims as if an open-ended transition phrase were used.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by LaRose et al (US Patent Number 4269335). LaRose teaches a motorcycle luggage rack (1) that includes a platform (3) positioned above a mounting bracket support (15) where the mounting bracket and the platform are attached with multiple pivoting links (31 and 33),

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which are attached at one end to the mounting bracket with jointed axial connections (49 and 51) and attached at the other end to the platform with jointed axial connections (39 and 41). LaRose discloses that the platform is movable between a rear and forward position while maintaining a horizontal orientation and that the mounting bracket is rigidly fastened to multiple points (19) on the vehicle. The LaRose device is locked into each position with a lock member (43) that secures the platform and the multiple pivoting links in the forward and rear positions to retain the apparatus during vehicle operation. While the introductory statement of intended use has been carefully considered, it is deemed not to impose any structure on the claim distinguishable over that shown by LaRose, which is fully capable of being used as claimed. It is of a size and shape and has the necessary means to be capable of being used as a carrier rack on not only a motorcycle but also an all terrain vehicle.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaRose et al (US Patent Number 4269335) in view of Ketterhagen (US Patent Number 6561396). Ketterhagen teaches an automobile cargo carrier system that has a carrier (36) mounted to a vehicle (14) and moving between positions via multiple pivoting links (44 and 46) that connect the carrier to the mounting bracket (40). Ketterhagen

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discloses that the carrier may have at least one load assist device (48) for moving the load between positions that could include a spring mechanism or a pressurized strut mechanism (column 5, line 54) where the load assist is attached at one end to a link and at the other end to the carrier.

5. As shown by Ketterhagen, the use of load assist devices for moving loads on a rack that is movable between positions by way of multiple pivoting links is well known in the art. Because both the Ketterhagen and the LaRose devices are cargo carriers for vehicular attachment that can move between positions by way of multiple pivoting links, it would have been obvious to one skilled in the art at the time of invention to apply a load assist device as in the technology of Ketterhagen to one or more of the linkages of LaRose in order to provide mechanical assistance when repositioning the carrier rack.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over LaRose et al (US Patent Number 4269335) in view of Puska (US Patent Number 6461095). Puska teaches an ATV lift and carry apparatus (10) that includes a carrying rack (44) attachable to the frame of an ATV and has a support bar (52), which is a rail structure, attached to the rack in a generally centered and generally upper location to the rearward most portion of the cargo carrying rack structure. It is well known in the art to use a supporting rail at the rear of a carrying rack attached to vehicles. Therefore, it would have been obvious to one skilled in the art at the time of invention to incorporate a support rail as in the technology of Puska in the LaRose carrier rack.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over LaRose et al (US Patent Number 4269335) in view of Carter (US Patent Number D335254).

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Carter teaches a safety flag mounting bracket for use with a recreational vehicle that includes a mounting bracket capable of holding a flag that is capable of attaching to members commonly used in the construction of carrying racks. The Carter device is capable of attaching to a vehicle carrying rack such as the device disclosed by Larose to provide a mount for holding a mast of a visibility flag on a vehicle. Therefore it would have been obvious to one skilled in the art at the time of invention to make a mount as in the technology of Carter integral with a carrying rack for a vehicle as disclosed by LaRose.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art made of record is located in the Notice of References Cited (PTO Form-892). Stokes (US Patent Number 5901890) teaches a scuba gear rack for watercraft that shows the use of a flag mount on a carrier rack attached to a vehicle.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan C. Hoesly whose telephone number is (571)-272-6083. The examiner can normally be reached on Monday-Thursday 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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LEE YOUNG  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700